

28/10257

OGC Has Reviewed

6 January 1955

MEMORANDUM FOR: Deputy Assistant Director for Personnel

SUBJECT : Applicability of Federal Employees' Pay Regulations to Employees of this Agency

1. In your memorandum you requested the opinion of this office as to whether subpart C of part 25 of the Federal Employees' Pay Regulations, as revised and appearing in the Federal Register for 2 November 1954, should be considered as binding on this Agency or as constituting a guide to be followed by the Agency in the discretion of the Director. You raised this question in the context of your statement that representatives of this office previously had informed your office that these regulations, prior to their revision, were binding on the Agency in spite of the Agency specifically being exempted from their application. You pointed out that this specific exemption had been carried over to the revised regulations.

2. The regulations in question were issued by the Chairman of the Civil Service Commission pursuant to the authority stated in section 605 of the Federal Employees' Pay Act of 1945 (59 Stat. 295, 5 U.S.C. 901) (hereinafter called the Pay Act):

"Sec. 605. The Civil Service Commission is hereby authorized to issue such regulations, subject to the approval of the President, as may be necessary for the administration of the foregoing provisions of this Act insofar as this Act affects officers and employees in or under the executive branch of the Government".

Section 25.202(8) of the regulations issued effective 31 October 1954 exempts the officers and employees of this Agency from the application of the regulations. This same exemption appeared in earlier issuances of the same regulation.

3. So far as we know, this office has not taken the position that this Agency was bound by the regulations issued by the Commission under the authority of section 605 of the Pay Act despite the Commission's exemption of the Agency from the application of those regulations. We have taken the position that the Agency was subject to certain parts of the basic statute. Our conclusion in this regard is based on the following. Section 101(a) of the Act, in relevant part, provides that:

"Subject to the exemptions specified in section 102 of this Act, titles II and III of this Act shall apply (1) to all civilian officers and employees in or under the executive branch of the Government. . . ."
(Emphasis supplied)

Title II deals with compensation for overtime and Title III deals with compensation for night and holiday work. Section 101(b) of the Act provides that Title IV shall apply to officers and employees of the government occupying positions subject to the Classification Act of 1923, as amended. Section 101(c) provides that Title V shall apply to officers and employees in or under the legislative or judicial branches of the government, subject to certain exemptions not relevant here. Section 101(d) provides that Title VI shall apply to civilian officers and employees of the government--again subject to the exemptions set out in section 102. The provisions of section 101(e) have no relevance to the issue here. The exemptions to the statute are listed in section 102. Among these the Central Intelligence Agency is not listed; nor has it been listed in any amendments to the law enacted by the Congress.

4. The Classification Act of 1923, as amended, has been amended by the Classification Act of 1949 (63 Stat. 954, 5 U.S.C. 1071). Section 202(16) of this Act exempts the Agency from its application. From this and the material set out in the preceding paragraph, we conclude that this Agency is subject to Title II ("Compensation for Overtime"), Title III ("Compensation for Night and Holiday Work") and Title VI ("Miscellaneous Provisions") of the Pay Act. Conversely, we conclude the Agency not to be subject to Title IV ("Amendments to the Classification Act of 1923", as amended) or Title V ("Employees of Legislative or Judicial Branches"). However, it does not follow that, if the Civil Service Commission sees fit to exempt this Agency from such regulations as it may issue bearing on the administration of those titles, the Agency is exempt from the titles themselves. It is within the jurisdiction of the Congress to enact laws and prescribe to whom they shall apply. It is within the jurisdiction of the Commission to prescribe regulations for the administration of these laws and to whom such regulations shall apply. In the instance at hand, the Congress had decreed that the Agency shall be subject to certain parts of the law but the Commission had decided that the Agency shall be exempt from the regulations pertaining to the administration of those parts.

5. Admittedly this is an anomalous situation - engendered, we are led to believe, by the Commission's interpreting Section 10 of the Central Intelligence Agency Act of 1949 (64 Stat. 450, 50 U.S.C. 403(1)) as exempting the Agency from the Pay Act. But whatever the anomaly of the situation and whatever the merits of the Chairman's action giving rise to it, the situation obtains. While the Agency is bound by the cited parts of the law, it is free to observe such of the regulations issued for the administration of those parts as the Agency may deem appropriate. It is not believed necessary that the DCI approve the utilization of such regulations, this being a matter properly within the purview of the Deputy Director (Administration).

CGC:HF:SS

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